GEORGE A. SULLIVAN

IBLA 87-539 Decided February 23, 1989

Appeal from a decision of the California State Office, Bureau of Land Management, declaring lode mining claim null and void ab initio. CA-MC 187036.

Affirmed.

1. Mining Claims: Lands Subject to--Mining Claims: Withdrawn Land--Withdrawals and Reservations: Effect of

A lode mining claim is properly declared null and void ab initio if, at the time of location, the land was withdrawn from appropriation under the mining laws of the United States.

APPEARANCES: George A. Sullivan, pro se.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

George A. Sullivan has appealed from a decision of the California State Office, Bureau of Land Management (BLM), dated May 26 1987, declaring the New Deal lode mining claim, CA-MC 187036, null and void ab initio. The BLM decision noted that the subject claim was located in the N\ SE^ sec. 27, T. 29 S., R. 12 E., Mount Diablo Meridian, and filed for recordation with BLM on January 15, 1987. Pointing out that on November 27, 1970, the land embraced within the claim had been withdrawn from appropriation of the mining laws under Public Land Order No. (PLO) 4957, for use as a National Forest Botanical Area (see 35 FR 18382 (Dec. 3, 1970)), the State Office declared the claim null and void ab initio.

On appeal to this Board, appellant argues that the subject claim is merely a re-initiation of an older claim, apparently necessitated by a break in the filing of annual assessment work under section 314(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. | 1744(a) (1982). Appellant has submitted a number of documents with his appeal. Apparently, a mining claim covering the same land and also denominated the New Deal claim was originally located in 1936 by one Charles L. Seeley, and subsequently quitclaimed to John and Anne Andrews, on August 15, 1962.

It is unclear exactly what became of the original claim. Thus, there is no documentation in the present record showing that the claim located by Seeley had ever been conveyed to appellant. Chronologically, however, the

documentation submitted by appellant does indicate that, on February 1, 1981, appellant located a lode claim named the New Deal. This claim was duly recorded with BLM on February 23, 1981.

From the documents, it would appear that, for the years 1982 through 1985, appellant timely filed proofs of annual assessment work performed for that location. It further appears that no filing was made for calendar year 1986. 1/ Appellant apparently contacted the State Office where he states that he was informed that he should resubmit his claim on a claim location notice. 2/

Subsequently, on January 2, 1987, Sullivan recorded a notice of location with the San Luis Obispo County clerk, attesting that he had located the New Deal lode claim on that day. As recorded, this claim covered the same land as that embraced by the 1981 claim, as well as by the 1936 claim. Appellant then recorded a copy of the location notice with BLM on January 15, 1987, pursuant to section 314(b) of FLPMA. As noted above, this claim was declared null and void ab initio by the decision under appeal herein.

[1] Subject to valid existing rights, PLO 4957 withdrew the National Forest lands encompassed in "Sec. 27, lots 3, 4, 5 and 7-14 inclusive" of T. 29 S., R. 12 E., Mount Diablo Meridian "from appropriation under the mining laws (30 U.S.C. Ch.2)." The law is well settled that a mining claim located on lands which are not open to appropriation under the mining laws confers no right upon the locator and is properly declared null and void ab initio. Kathryn J. Story, 104 IBLA 313, 315 (1988); Coeur Explorations, Inc., 100 IBLA 293, 295 (1987); Harold E. De Roux, 94 IBLA 350, 351 (1986); Azome Utah Mining Co., 86 IBLA 170, 175 (1985); John C. Neill, 80 IBLA 39, 40 (1984); John A. Grassmeier, 77 IBLA 156, 159 (1983).

Appellant does not dispute that his lode claim lies wholly within the lands withdrawn by PLO 4957, nor does he challenge the validity of PLO 4957 or its applicability to the subject land. Rather, the thrust of appellant's objections appears to be that he had developed a practice of relying on receipt of annual notification from BLM informing him that he should make the filings required under section 314(a) of FLPMA. Since he did not receive such a notification in 1986, appellant seemingly believes that BLM should bear some of the responsibility for his failure to make a filing for calendar year 1986.

1/ Thus, on the bottom of the second page of the 1987 location notice, appellant noted that he had grown accustomed to receiving the BLM reminder notices and, when he failed to receive one in 1986, he neglected to file his assessment work notice.

2/ It is possible, if not likely, that appellant was actually told that he should relocate his claim, rather than merely re-submit the old claim on a new location notice, as the 1981 claim would necessarily have been deemed conclusively abandoned and void under section 314(c) of FLPMA, 43 U.S.C. | 1744(c) (1982), upon the failure of appellant to submit the requisite annual filing in 1986. See, e.g., Ronald Willden, 97 IBLA 40 (1987); Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

Appellant's arguments must be rejected. In the first place, the decision under appeal does not involve the 1981 location; rather, it is, by its own terms, limited to the 1987 location. There is no gainsaying that that location is null and void ab initio, as it was made when the land was not open to location and entry under the mining laws.

The issues surrounding the 1981 location are not properly before the Board. Assuming that appellant failed to appeal from a determination that this earlier claim was abandoned and void for failure to timely submit the annual assessment filing for 1986, the invalidity of that claim is now res judicata and not subject to relitigation in this appeal. And, even were this not the case, the same result would obtain.

Appellant basically argues that BLM should have been estopped from declaring the 1981 location abandoned and void because it failed to remind him in 1986 of the annual filing requirement of FLPMA. The simple fact of the matter, however, is that appellant is the person who bears the ultimate responsibility for compliance with the filing requirements of FLPMA. While it is true that BLM does attempt to provide annual reminders to mining claimants of their obligations under FLPMA, the fact that an individual may not have received such a reminder neither excuses nor justifies a failure to make an annual filing. See Fawn Rupp, 65 IBLA 277, 280 (1982). When appellant failed to timely submit either a notice of intention to hold or proof of assessment work performed for calendar year 1986, the 1981 location became conclusively presumed to be abandoned and void as a matter of law. See United States v. Locke, 471 U.S. 84 (1985); Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

In any event, it is clear from the record before the Board that the 1981 location was, itself, null and void ab initio, as it, too, was made at a time when the lands embraced by the claim were not open to location. While it is unfortunate that BLM did not inform appellant of this fact earlier, the applicable regulation clearly provides that the:

> Failure of the government to notify an owner upon his filing or recording of a claim or site under this subpart that such claim or site is located on lands not subject to location or otherwise void for failure to comply with Federal or State law or regulations shall not prevent the government from later challenging the validity of or declaring void such claim or site in accordance with due process of law.

43 CFR 3833.5(f). Thus, even had appellant timely made a filing for the 1981 location within the 1986 calendar year, that claim would have ultimately been declared null and void for the same reasons as the instant claim. 3/ In light of the foregoing, it is clear that the BLM determination must be sustained.

3/ Moreover, even if appellant were attempting to claim through the original 1936 location, the result would be essentially the same. Thus, assuming appellant could show privity between his 1981 location and Seeley's 1936

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

James L. Burski
Administrative Judge

I concur:

Kathryn A. Lynn
Administrative Judge
Alternate Member

fn. 3 (continued)
location (see Russell Hoffman (On Reconsideration), 87 IBLA 146 (1985); Tibbetts v. Bureau of Land Management, 62 IBLA 124 (1982)), so that his 1981 location might be deemed an amendment rather than a relocation of Seeley's claim, it would still have been necessary to record the 1936 location on or before Oct. 22, 1979. Failing in that, the 1936 claim would also be deemed abandoned and void under FLPMA and could not serve as the source of any rights to the land involved herein. Thus, since it appears that the 1936 claim was never timely filed with BLM, it would be impossible for appellant to base any rights thereon in either 1981 or 1987.